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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 WALTER PEREZ ESCOBAR,
12 MARGARITO GONZALEZ, and
13 FRANCISCO CISNEROS-
14 ZAVALA, individually and on
15 behalf of all others similarly
16 situated,

17 Plaintiff,

18 v.

19 WHITESIDE CONSTRUCTION
20 CORPORATION, NMS SUPPLY,
21 INC., J. W. CONSTRUCTION,
22 INC., and DAVID R. WHITESIDE,

23 Defendants.

Case No.

CV 08 1120

CLASS ACTION COMPLAINT

1. Cal. Lab. Code § 226.7 (wages for rest and meal period)
2. Cal. Lab. Code § 203 (continuing wages)
3. Cal. Lab. Code § 226 (wage statements)
4. Cal. Lab Code §§ 204, 510 and 1194 California Labor Code (Failure to Pay Minimum Wage or Overtime Compensation)
5. 29 USCS § 206 and 207 (Fair Labor Standards Act)
6. Cal. Bus. & Prof. Code § 17200 *et seq.*
7. California Labor Code § 2802, Indemnification for Expenditures or Losses in Discharge of Duties

DEMAND FOR JURY TRIAL

1 COME NOW Plaintiffs, and for their causes of action against Defendants, allege:

2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b).
4 Defendants constitute an “enterprise” within the meaning of the Fair Labor Standards
5 Act, 29 U.S.C. § 203. See 29 U.S.C. § 203(r) (defining “enterprise”). Defendants are
6 engaged in interstate commerce, with annual sales in excess of \$1,000,000 and with
7 more than 300 employees. This Court has federal-question jurisdiction under 28 U.S.C.
8 § 1331. Furthermore, under 28 U.S.C. § 1367, this Court may exercise supplemental
9 jurisdiction over Plaintiff’s state-law claims. There are no grounds that would justify
10 this Court’s declining to exercise its jurisdiction pursuant to 28 U.S.C. § 1367. See 28
11 U.S.C. § 1367(c) (explaining grounds on which courts may decline to exercise
12 supplemental jurisdiction).

13 **PARTIES AND JURISDICTION**

14 2. Plaintiffs FRANCISCO CISNEROS-ZAVALA (“CISNEROS-ZAVALA”),
15 MARGARITO GONZALEZ (“GONZALEZ”) and WALTER PEREZ ESCOBAR
16 (“ESCOBAR”) (collectively, “Plaintiffs”) are individuals who, during the time periods
17 relevant to this Complaint, were employed within the County of Contra Costa, State of
18 California. ESCOBAR is resident of the County of Marin, State of California.
19 CISNEROS-ZAVALA and GONZALEZ are residents of the County of Contra Costa.

20 3. Defendant WHITESIDE CONSTRUCTION CORPORATION
21 (“WHITESIDE”) was and is a California Corporation doing business within the State of
22 California. On the California Secretary of State’s website, WHITESIDE lists its address
23 as P.O. Box 3578, San Rafael, California 94912. Defendants are informed and believe
24 and thereupon allege that WHITESIDE’S actual place of business is 1151 Hensley
25 Street, Richmond, California 94801. WHITESIDE’S Agent for Service of Process is
26 David R. Whiteside, 101 Morpew Street, San Rafael, California 94901. WHITESIDE
27 is a large concrete construction company that conducts business throughout the greater
28 San Francisco Bay Area. WHITESIDE is licensed in California under Contractor’s

1 License number 577719.

2 4. Defendant NMS SUPPLY INC. ("NMS") was and is a California
3 Corporation doing business within the State of California. On the California Secretary
4 of State's website, NMS lists its address as 1151 Hensley Street, Richmond, California
5 94801. NMS's Agent for Service of Process is David R. Whiteside, 20 Baywood Circle,
6 Novato, California 94949. On information and belief, NMS does not appear to hold a
7 California Contractor's License.

8 5. Defendant J.W. CONSTRUCTION, INC. ("JWC") was and is a California
9 Corporation doing business within the State of California. On the California Secretary
10 of State's website, JWC lists its address as 631 Marina Way South, Richmond,
11 California 94804. JWC's Agent for Service of Process is Michelle A. Whiteside, 615
12 Biscayne Drive, San Rafael, California 94901. On information and belief, JWC does not
13 appear to hold a California Contractor's License.

14 6. WHITESIDE 2007 ("WHITESIDE 2007") is the name of the company that
15 is listed on GONZALEZ's W2 for the year 2007. The California Secretary of State does
16 not list WHITESIDE 2007 as either a registered California Corporation or a registered
17 Limited Liability Company. GONZALEZ's W2 lists WHITESIDE 2007's Employer
18 Identification Number ("EIN") as the same EIN as is listed on WHITESIDE's W2.
19 Plaintiffs are informed and believe and thereupon allege that Defendant DAVID R.
20 WHITESIDE controls and operates WHITESIDE 2007, and that WHITESIDE 2007 is
21 another name for WHITESIDE.

22 7. Plaintiffs are informed and believe and thereupon allege that Defendant
23 David R. Whiteside ("DAVID R. WHITESIDE") is the President of WHITESIDE, NMS,
24 and JWC. DAVID R. WHITESIDE controls and is responsible for the operations,
25 policies and practices as herein alleged for WHITESIDE, NMS, and JWC. Defendants
26 are informed and believe and thereupon alleged that DAVID R. WHITESIDE is a
27 resident of Novato, California. Plaintiffs are informed and believe and thereupon allege
28 that DAVID R. WHITESIDE hires employees by and through WHITESIDE, JWC, and

1 NMS to work on and for DAVID R. WHITESIDE's various construction jobs
2 throughout Northern California.

3 8. Defendants are informed and believe and thereupon alleged that
4 WHITESIDE, NMS, JWC, and DAVID R. WHITESIDE maintain facilities in and
5 throughout Marin and Contra Costa Counties. WHITESIDE, NMS, JWC, and DAVID
6 R. WHITESIDE conduct business throughout Northern California and at all relevant
7 times employed Plaintiffs and numerous other hourly paid employees throughout
8 Northern California. WHITESIDE, NMS, JWC, and DAVID R. WHITESIDE have
9 significant contacts with this judicial district and the activities complained of herein
10 occurred in whole or in part, in this judicial district.

11 **GENERAL ALLEGATIONS**

12 9. CISNEROS-ZAVALA worked as an employee of WHITESIDE, NMS
13 and/or JWC from approximately December 2000 through August 2007. During this
14 period CISNEROS-ZAVALA was employed as a non-exempt Laborer at
15 WHITESIDES's facilities in Richmond, California. GONZALEZ worked as an
16 employee of WHITESIDE and JWC from approximately April 1991 through February
17 2007. During this period GONZALEZ was employed as a non-exempt Laborer at
18 WHITESIDES's facilities in Richmond, California. ESCOBAR worked as an employee
19 of NMS from approximately November 2007 through December 2007. During this
20 period GONZALEZ was employed as a non-exempt Laborer at WHITESIDES's
21 facilities in Richmond, California. Under Wage Order 16-2001, Construction
22 occupations, including construction Laborers such as Plaintiffs, are not considered
23 exempt employees.

24 10. WHITESIDE, NMS, JWC and DAVID R. WHITESIDE required that
25 Plaintiffs report to the WHITESIDE construction yard in Richmond, California at 6:00
26 A.M. each workday. At that time, the Plaintiffs would be directed by WHITESIDE
27 management, including but not limited to DAVID R. WHITESIDE, as to where they
28 were being assigned to work that particular day. Thereafter, the Plaintiffs would travel

1 from the WHITESIDE construction yard to the WHITESIDE project where they were
2 assigned to work. Generally, WHITESIDE would assign the Plaintiffs a work schedule
3 that began at 7:00 A.M and ended at 3:30 P.M.

4 11. Generally, WHITESIDE, NMS, JWC and DAVID R. WHITESIDE did not
5 pay the Plaintiffs for any time spent working prior to 7:00 A.M. Furthermore, Plaintiffs
6 were not paid for the travel time between the WHITESIDE construction yard in
7 Richmond, California and the location where the Plaintiffs would work that day.
8 Furthermore, many times the Plaintiffs would work past 3:30 PM, the time they were
9 regularly scheduled to end work, but Plaintiffs were rarely, if ever, compensated for this
10 additional time spent working. Furthermore, Plaintiffs would not be compensated for the
11 afternoon or evening time spent driving from the Defendant construction site to the
12 WHITESIDE yard in Richmond, California.

13 12. Plaintiffs were rarely provided with a 10 minute break within the first 4
14 hours of their workday. Furthermore, Plaintiffs were never provided with a 10 minute
15 break within the second 4 hours of their workday (i.e. within hours 5 through 9 of a
16 typical workday).

17 13. Furthermore, in many instances Plaintiffs were required to work through
18 their 30 minute lunch break, and were either not allowed to take a lunch break, or, were
19 required to cut short their 30 minute lunch break.

20 14. In many instances, the Plaintiffs were required to drive their own vehicles
21 from the WHITESIDE yard in Richmond, California to the Defendants' construction
22 location where the employee was assigned to work on a particular day. Sometimes the
23 work site would be more than an hour from the WHITESIDE yard in Richmond,
24 California. Even though Plaintiffs used their personal vehicles to drive from the
25 WHITESIDE yard in Richmond to the construction site, the Plaintiffs were never paid a
26 mileage stipend, nor were they compensated for their gas money or bridge tolls.

27 15. At all relevant times mentioned herein, section 201 of the California Labor
28 Code provided that "wages earned and unpaid at the time of discharge are due and

1 payable immediately.” Section 202 of the California Labor code provided that for
2 individuals who quit with at least three days notice, payment of final wages would be
3 immediate and that for individuals who quit without notice, payment of final wages
4 would be within 72 hours.

5 16. WHITESIDE, NMS, JWC and DAVID R. WHITESIDE did not compensate
6 Plaintiffs as required by sections 201 and/or 202 of the California Labor Code.

7 17. To date, Plaintiffs have not been compensated for all of the work they
8 performed for WHITESIDE, NMS, JWC and DAVID R. WHITESIDE.

9 18. At all relevant times mentioned herein, section 203 of the California Labor
10 Code provided:

11 If an employer willfully fails to pay, without abatement or reduction, in
12 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
13 employee who is discharged or who quits, the wages of the employee shall
14 continue as a penalty from the due date thereof at the same rate until paid or
15 until action therefor is commenced; but the wages shall not continue for
16 more than 30 days.

17 19. Plaintiffs contend that the failure of WHITESIDE, NMS, JWC and DAVID
18 R. WHITESIDE to pay them within the time provided by sections 201 and 202 of the
19 California Labor Code has been and is “willful” within the meaning of section 203 of the
20 California Labor Code and that, accordingly, Plaintiffs are entitled to the “continuing
21 wages” provided for by section 203.

22 20. At all relevant times mentioned herein, section 1198 of the California Labor
23 Code provided:

24 The maximum hours of work and the standard conditions of labor fixed by
25 the [Industrial Welfare Commission] shall be the maximum hours of work
26 and the standard conditions of labor for employees. The employment of any
27 employee for longer hours than those fixed by [an] order or under
28 conditions of labor prohibited by [an] order is unlawful.

1 21. At all relevant times mentioned herein, Wage Order Number 16 (as
2 periodically amended) applied to Plaintiffs.

3 22. Wage Order 16 requires a one-hour wage premium for each day that an
4 employee is not provided with a mandated ten-minute rest period per four-hour work
5 period. Wage Order 16, ¶11(D). Additionally, Wage Order 16 requires a one-hour wage
6 premium for each day that an employee is not provided with a mandated thirty-minute
7 meal period for any shift that is longer than five hours. Wage Order 16, ¶10(F).
8 Additionally, Wage Order 16 requires that those who are employed more than eight (8)
9 hours in any workday or more than 40 hours in any workweek receive overtime
10 compensation. Wage Order 16, ¶3(A). Finally, Wage Order 16 requires that all
11 employer-mandated travel that occurs after the first location where the employee's
12 presence is required by the employer shall be compensated at the employee's regular rate
13 of pay or, if applicable, the premium rate that may be required by the provisions of the
14 California Labor Code. Wage Order 16, ¶5(A).

15 23. The right to rest periods and meal periods has been codified in sections
16 226.7 and 512 of the California Labor Code. At all relevant times mentioned herein,
17 section 512(a) provided:

18 An employer may not employ an employee for a work period of more than
19 five hours per day without providing the employee with a meal period of not
20 less than 30 minutes, except that if the total work period per day of the
21 employee is no more than six hours, the meal period may be waived by
22 mutual consent of both the employer and employee. An employer may not
23 employ an employee for a work period of more than 10 hours per day
24 without providing the employee with a second meal period of not less than
25 30 minutes, except that if the total hours worked is no more than 12 hours,
26 the second meal period may be waived by mutual consent of the employer
27 and the employee only if the first meal period was not waived.

28 At all relevant times mentioned herein, section 226.7(b) provided:

1 If an employer fails to provide an employee a meal period or rest period in
2 accordance with an applicable order of the Industrial Welfare Commission,
3 the employer shall pay the employee one additional hour of pay at the
4 employee's regular rate of compensation for each work day that the meal or
5 rest period is not provided.

6 24. Compensation for missed rest and meal periods constitutes wages within the
7 meaning of section 201 of the California Labor Code.

8 25. At all relevant times mentioned herein, section 558 of the California Labor
9 Code provided:

10 (a) Any employer or other person acting on behalf of an employer who
11 violates, or causes to be violated, a section of this chapter or any provision
12 regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial
14 violation, fifty dollars (\$50) for each underpaid employee for each pay
15 period for which the employee was underpaid in addition to an amount
16 sufficient to recover underpaid wages. (2) For each subsequent violation,
17 one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee was underpaid in addition to an amount
19 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this
20 section shall be paid to the affected employee.

21 26. Plaintiffs contend that WHITESIDE, NMS, JWC and DAVID R.
22 WHITESIDE's failure to comply with section 512 of the California Labor Code and with
23 Wage Order 16 subjects WHITESIDE, NMS, and JWC to civil penalties pursuant to
24 section 558.

25 27. Plaintiffs also contend that WHITESIDE, NMS, and JWC's failure to
26 comply with section 226 of the California Labor Code subjects WHITESIDE, NMS, and
27 JWC to civil penalties pursuant to section 226.3 of the California Labor Code. At all
28 relevant times mentioned herein, section 226 of the California Labor Code provided:

1 (a) Every employer shall, semimonthly or at the time of each payment of
2 wages, furnish each of his or her employees, either as a detachable part of
3 the check, draft, or voucher paying the employee's wages, or separately
4 when wages are paid by personal check or cash, an itemized statement in
5 writing showing (1) gross wages earned, (2) total hours worked by the
6 employee, except for any employee whose compensation is solely based on
7 a salary and who is exempt from payment of overtime under subdivision (a)
8 of Section 515 or any applicable order of the Industrial Welfare
9 Commission, (3) the number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
11 provided, that all deductions made on written orders of the employee may
12 be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of
14 the employee and his or her social security number, (8) the name and
15 address of the legal entity that is the employer, and (9) all applicable hourly
16 rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee. The deductions made from
18 payments of wages shall be recorded in ink or other indelible form, properly
19 dated, showing the month, day, and year, and a copy of the statement or a
20 record of the deductions shall be kept on file by the employer for at least
21 three years at the place of employment or at a central location within the
22 State of California.

23

24 (e) An employee suffering injury as a result of a knowing and intentional
25 failure by an employer to comply with subdivision (a) is entitled to recover
26 the greater of all actual damages or fifty dollars (\$50) for the initial pay
27 period in which a violation occurs and one hundred dollars (\$100) per
28 employee for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
2 award of costs and reasonable attorney's fees.

3

4 (g) An employee may also bring an action for injunctive relief to ensure
5 compliance with this section, and is entitled to an award of costs and
6 reasonable attorney's fees.

7 WHITESIDE, NMS, and JWC employed Plaintiffs but failed to provide them with the
8 data required by section 226 of the California Labor Code. For example, WHITESIDE,
9 NMS, and JWC failed to provide information concerning the legal name and address of
10 the employer, the total hours actually worked by the employee and total wages earned on
11 account of meal and rest penalties. WHITESIDE, NMS, and JWC further failed to
12 provide information regarding the time and wages for pre and post-shift work performed
13 by Plaintiffs but not paid for by WHITESIDE, NMS, and JWC. Exhibit 1 hereto reflects
14 certain of Plaintiffs' wage statements. At all relevant times mentioned herein, section
15 226.3 of the California Labor Code provided:

16 Any employer who violates subdivision (a) of Section 226 shall be subject
17 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
18 employee per violation in an initial citation and one thousand dollars
19 (\$1,000) per employee for each violation in a subsequent citation, for which
20 the employer fails to provide the employee a wage deduction statement or
21 fails to keep the records required in subdivision (a) of Section 226. The
22 civil penalties provided for in this section are in addition to any other
23 penalty provided by law.

24 28. At all relevant times mentioned herein, section 204(a) of the California Labor
25 Code provided:

26 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,
27 earned by any person in any employment are due and payable twice during
28 each calendar month, on days designated in advance by the employer as the

1 regular paydays. Labor performed between the 1st and 15th days, inclusive,
2 of any calendar month shall be paid for between the 16th and the 26th day
3 of the month during which the labor was performed, and labor performed
4 between the 16th and the last day, inclusive, of any calendar month, shall be
5 paid for between the 1st and 10th day of the following month.

6 29. At all relevant times mentioned herein, section 510 (a) of the California Labor
7 Code provided:

8 Eight hours of labor constitutes a day's work. Any work in excess of
9 eight hours in one workday and any work in excess of 40 hours in any
10 one workweek and the first eight hours worked on the seventh day of
11 work in any one workweek shall be compensated at the rate of at least one
12 and one-half times the regular rate of pay for an employee. Any work in
13 excess of 12 hours in one day shall be compensated at the rate of no less
14 than twice the regular rate of pay for an employee. In addition, any work
15 in excess of eight hours on any seventh day of a workweek shall be
16 compensated at the rate of no less than twice the regular rate of pay of an
17 employee. Nothing in this section requires an employer to combine more
18 than one rate of overtime compensation in order to calculate the amount
19 to be paid to an employee for any hour of overtime work. The
20 requirements of this section do not apply to the payment of overtime
21 compensation to an employee working pursuant to any of the following

22 (1) An alternative workweek schedule adopted pursuant to Section 511.

23 (2) An alternative workweek schedule adopted pursuant to a collective
24 bargaining agreement pursuant to Section 514.

25 30. In regard to the employment of Plaintiffs, the provisions of subparagraphs (1)
26 and (2) of section 510 of the California Labor Code were inapplicable in that no
27 alternative workweek schedule had been adopted pursuant to section 511 and Plaintiffs'
28 employment to which reference is hereinafter made was not governed by any collective

1 bargaining agreement.

2 31. At all relevant times mentioned herein, section 1194 of the California Labor
3 Code provided:

4 Notwithstanding any agreement to work for a lesser wage, any employee
5 receiving less than the legal minimum wage or the legal overtime
6 compensation applicable to the employee is entitled to recover in a civil
7 action the unpaid balance of the full amount of this . . . overtime
8 compensation, including interest thereon, reasonable attorney's fees, and
9 costs of suit.

10 At all relevant times mentioned herein, section 1194.2 of the California Labor Code
11 provided:

12 (a) In any action under . . . Section 1194 to recover wages because of the
13 payment of a wage less than the minimum wage fixed by an order of the
14 commission, an employee shall be entitled to recover liquidated damages in
15 an amount equal to the wages unlawfully unpaid and interest thereon.

16 32. Notwithstanding the foregoing requirements of law, Plaintiffs were routinely
17 denied payment of minimum wage or overtime wages, being compensated only for hours
18 scheduled rather than for actual hours worked. For example, Plaintiffs were not
19 compensated for work performed before and/or after the scheduled work shift.

20 33. Section 2699 of the California Labor Code, the Labor Code Private
21 Attorneys General Act of 2004, provides in subpart (a) and subparts (f) through (g):

22 Notwithstanding any other provision of law, any provision of this code that
23 provides for a civil penalty to be assessed and collected by the Labor and
24 Workforce Development Agency or any of its departments, divisions,
25 boards, agencies or employees, for a violation of this code, may, as an
26 alternative, be recovered through a civil action brought by an aggrieved
27 employee on behalf of herself or herself and other current or former
28 employees pursuant to the procedures specified in Section 2699.3.

1

2 For all provisions of this code except those for which a civil penalty is
3 specifically provided, there is established a civil penalty for a violation of
4 these provisions . . . on behalf of herself or herself and other current or
5 former employees

6 34. Pursuant to section 2699 of the California Labor Code, Plaintiffs contends
7 that sections 201, 203, 204, 226, 226.3, 226.7, 512, 558, 1194 and 1198 of the California
8 Labor Code may entitle them to recover civil penalties against WHITESIDE, NMS, and
9 JWC through a civil action on behalf of themselves and other current and former
10 employees. Further, the provisions of Wage Order 16 also may entitle them to recover
11 civil penalties against WHITESIDE, NMS, and JWC through a civil action on behalf of
12 themselves and other current and former employees.

13 **CLASS-ACTION ALLEGATIONS**

14 35. The class represented by Plaintiffs (hereafter referred to as the "Class")
15 consists of all natural persons who were issued one or more paychecks by WHITESIDE,
16 NMS, and/or JWC in California during the period beginning four years prior to the filing
17 of this Complaint to date (such persons referred to hereafter as "Class Members" and
18 such period referred to hereafter as "Class Period").

19 36. Plaintiffs contend that the failure of WHITESIDE, NMS, and/or JWC to
20 provide the data required by section 226 of the California Labor Code entitles each Class
21 Member to either actual damages or statutory damages, whichever is greater.

22 37. Plaintiffs contend that the failure of WHITESIDE, NMS, and/or JWC to pay
23 wages as provided by section 226.7 of the California Labor Code entitles each Class
24 Member to payment of such earned but unpaid wages owing on account of missed rest
25 periods and meal breaks.

26 38. Plaintiffs contend that the failure of WHITESIDE, NMS, and/or JWC to pay
27 overtime wages as provided by sections 204, 514 and 1194 of the California Labor Code
28 entitles each Class Member to payment of such earned but unpaid overtime wages,

1 WHITESIDE, NMS, and/or JWC having, inter alia, failed to consider unpaid wages
2 owed on account of missed rest periods and meal breaks in computing the overtime rate
3 applicable to Plaintiffs and Class Members.

4 39. Plaintiffs contend that the failure of WHITESIDE, NMS, and JWC to make
5 final wage payments within the time provided by sections 201 and/or 202 of the
6 California Labor Code has been and is "willful" within the meaning of section 203 of the
7 California Labor Code and that, accordingly, each Class Member who has had his
8 employment with Defendants WHITESIDE, NMS, or JWC terminated is entitled to the
9 "continuing wages" for which provision is made by section 203 of the California Labor
10 Code.

11 40. The number of Class Members is great, believed to be in excess of one-
12 thousand persons. It therefore is impractical to join each Class Member as a named
13 plaintiff. Accordingly, utilization of a class action is the most economically feasible
14 means of determining the merits of this litigation.

15 41. Despite the Class Members' numerosity, the Class Members are readily
16 ascertainable through an examination of the records that WHITESIDE, NMS, and JWC
17 are required by law to keep. Likewise, the dollar amount owed to each Class Member is
18 readily ascertainable by an examination of those same records.

19 42. Common questions of fact and of law predominate in the claims of Class
20 Members over individual issues regarding the money owed to each Class Member.
21 Some of the common issues herein are described in Paragraph 46, infra.

22 43. There is a well-defined community of interest in the questions of law and
23 fact common to the Class Members. Some of the common issues herein are described in
24 Paragraph 46, infra.

25 44. Plaintiffs' claims are typical of the claims of the Class Members, which
26 claims all arise from the same general operative facts, namely, Defendants did not
27 compensate employees as required by the California Labor Code and the Fair Labor
28 Standards Act. Plaintiffs have no conflict of interest with the other Class Members and

1 they and their counsel are able to represent the interests of the other Class Members
2 fairly and adequately.

3 45. A class action is a superior method for the fair and efficient adjudication of
4 this controversy. The persons within the Class are so numerous that joinder of all of
5 them is impracticable. The disposition of all claims of the members of the class in a
6 class action, rather than in individual actions, benefits the parties and the court. The
7 interest of the Class Members in controlling the prosecution of separate claims against
8 Defendants is small when compared with the efficiency of a class action. The claims of
9 each individual Class Member are too small to litigate individually, and the
10 commencement of separate actions in this Court would lead to an undue burden on
11 scarce judicial resources. Further, the alternative of individual proceedings before the
12 California Labor Commissioner is impractical inasmuch as that agency has insufficient
13 resources to process such claims promptly and, under the provisions of California Labor
14 Code section 98.2, if the individual class members were to succeed in obtaining awards
15 in their favor, such awards are subject to appeal as a matter of right for a *de novo* trial in
16 Superior Court, leading to a multiplicity of such trials in that court. Further, absent class
17 treatment, employees will most likely be unable to secure redress given the time and
18 expense necessary to pursue individual claims, and individual Class Members will likely
19 be unable to retain counsel willing to prosecute their claims on an individual basis, given
20 the small amount of recovery. As a practical matter, denial of class treatment will lead to
21 denial of recovery to the individual Class Members.

22 46. There is a well-defined community of interest in the questions of law and fact
23 common to the Class. The key questions are the same for each Class Member: (a) Was
24 such Class Member an employee of Defendant WHITESIDE, NMS, JWC and/or DAVID
25 R. WHITESIDE? (b) Was such Class Member entitled to continuing wages? (c) Was
26 such Class Member paid his or her wages as provided by sections 201 and/or 202 of the
27 California Labor Code? (d) Did WHITESIDE, NMS, JWC and/or DAVID R.
28 WHITESIDE fail to timely pay Class members their minimum and overtime wages? (e)

1 Did WHITESIDE, NMS, JWC and/or DAVID R. WHITESIDE fail to pay Class
 2 Members for work performed before and/or after a work shift? (f) Did WHITESIDE,
 3 NMS, JWC and/or DAVID R. WHITESIDE fail to provide Class Members with
 4 appropriate a thirty minute, uninterrupted meal break? (g) Did WHITESIDE, NMS, JWC
 5 and/or DAVID R. WHITESIDE fail to provide Class Members with a mandated ten-
 6 minute rest period per four-hour work period? (h) Did WHITESIDE, NMS, JWC and/or
 7 DAVID R. WHITESIDE commit unlawful business acts or practices within the meaning
 8 of California Business and Professions Code sections 17200 *et seq.*? (i) Did
 9 WHITESIDE, NMS, JWC and/or DAVID R. WHITESIDE fail to compensate Class
 10 Members for car and transportation expense between WHITESIDE, which is located in
 11 Richmond, California and the Class Members' daily work site?

12 47. The interest of each Class Member in controlling the prosecution of his or her
 13 individual claim against WHITESIDE, NMS, JWC and DAVID R. WHITESIDE is small
 14 when compared with the efficiency of a class action.

15 **FLSA COLLECTIVE ACTION ALLEGATIONS**

16 48. In this collective action, Plaintiffs seek to represent all individuals who were
 17 employed by Defendants (the "COLLECTIVE ACTION MEMBERS").

18 49. Plaintiffs are similarly situated with the COLLECTIVE ACTION MEMBERS
 19 in that: (a) Plaintiffs and the COLLECTIVE ACTION MEMBERS were employed by
 20 Defendants; (b) Plaintiffs and the COLLECTIVE ACTION MEMBERS were not paid
 21 their wages for actual hours worked, instead being paid for scheduled hours; (c)
 22 Plaintiffs and the COLLECTIVE ACTION MEMBERS were not paid for work
 23 performed before and/or after a work shift; (d) Defendants knowingly and willfully
 24 violated provisions of the FLSA, by not paying Plaintiffs and the COLLECTIVE
 25 ACTION MEMBERS their wages; (e) As a result of Defendants' practice of withholding
 26 compensation for all hours worked, Plaintiffs and the COLLECTIVE ACTION
 27 MEMBERS have been similarly damaged in that they have not received timely payment
 28 in full of their earned wages.

1 50. This action is maintainable as an "opt-in" collective action pursuant to 29
2 U.S.C. § 216(b) as to claims for liquidated damages, costs and attorneys' fees under the
3 FLSA.

4 51. All individuals employed by Defendants should be given notice and be
5 allowed to give their consent in writing, i.e., "opt in," to the collective action pursuant to
6 29 U.S.C. § 216(b).

7 **FIRST CLAIM FOR RELIEF**

8 (Cal. Lab. Code § 226.7 *et seq.*)

9 (On Behalf of Class Against WHITESIDE, NMS, and JWC)

10 52. Plaintiffs replead, reallege, and incorporate by reference each and every
11 allegation set forth in the Complaint.

12 53. During the Class Period, Plaintiffs and Class Members generally were not
13 provided time to take all required ten-minute rest periods during their work shifts.

14 54. During the Class Period, Plaintiffs and Class Members generally were not
15 provided time to take all required non-working thirty-minute meal breaks during their
16 work shifts.

17 55. Accordingly, each Plaintiff and Class Member is entitled to compensation
18 for one hour of pay for each work shift longer than four hours during which he or she
19 was not provided a ten-minute rest period. Likewise, each Plaintiff and Class Member is
20 entitled to compensation for one hour of pay for each work shift longer than five hours
21 during which he or she was not provided a thirty-minute non-working meal break.

22 **SECOND CLAIM FOR RELIEF**

23 (Cal. Lab. Code § 203)

24 (On Behalf of Class Against WHITESIDE, NMS, and JWC)

25 56. Plaintiffs replead, reallege, and incorporate by reference each and every
26 allegation set forth in the Complaint.

27 57. The failure of WHITESIDE, NMS, and JWC to compensate Plaintiffs and
28 Class Members within the time provided by sections 201 and/or 202 of the California
Labor Code, despite its knowledge of its obligation to do so, was "willful" within the
meaning of section 203 of the California Labor Code. Each Plaintiff and Class Member

1 is entitled to continuing wages from the date on which his or her wages were due until
 2 the date on which WHITESIDE, NMS and JWC makes payment of the wages, not to
 3 exceed thirty days.

4 58. Plaintiffs and Class Members are entitled to an injunction to prevent such
 5 misconduct in the future, costs and such other relief as may be appropriate, demand for
 6 which is hereby made in accord with the provisions of the California Labor Code.

7 **THIRD CLAIM FOR RELIEF**

8 (Cal. Lab. Code § 226)

(On Behalf of Class Against WHITESIDE, NMS, and JWC)

9 59. Plaintiffs replead, reallege, and incorporate by reference each and every
 10 allegation set forth in the Complaint.

11 60. WHITESIDE, NMS, JWC and DAVID R. WHITESIDE employed Plaintiffs
 12 and Class Members but failed to provide them with the data required by section 226 of
 13 the California Labor Code. For example, WHITESIDE, NMS, JWC and DAVID R.
 14 WHITESIDE failed to provide information concerning the legal name and address of the
 15 employer, the total hours actually worked by the employee and total wages earned on
 16 account of meal and rest penalties. WHITESIDE, NMS, JWC and DAVID R.
 17 WHITESIDE further failed to provide information regarding the time and wages for pre
 18 and post-shift work preformed by Plaintiffs and Class Members but not paid for by
 19 WHITESIDE, NMS, and/or JWC. Accordingly, each Plaintiff and Class Member is
 20 entitled to damages, and Plaintiffs are entitled to an injunction to prevent such
 21 misconduct in the future, costs and attorney's fees, demand for which is hereby made in
 22 accord with the provisions of the California Labor Code.

23 **FOURTH CLAIM FOR RELIEF**

24 (Cal. Lab Code §§ 204, 510, 1194, 1194.2 and 1197 California Labor Code -- Failure
 to Pay Minimum Wage and Overtime Compensation)

25 (On Behalf of Class Against WHITESIDE, NMS, and JWC)

26 61. Plaintiffs replead, reallege, and incorporate by reference each and every
 27 allegation set forth in the Complaint.

28 62. WHITESIDE, NMS, and JWC employed Plaintiffs and Class Members but

1 failed to provide them with the overtime compensation required by sections 204, 510,
 2 1194, 1194.2 and 1197 of the California Labor Code. WHITESIDE, NMS, and JWC
 3 routinely paid employees for their scheduled time, rather than for their actual hours
 4 worked. Accordingly, each Plaintiff and Class Member is entitled to damages and
 5 liquidated damages, and Plaintiffs are entitled to costs and attorney's fees, demand for
 6 which is hereby made in accord with the provisions of the California Labor Code.

7 **FIFTH CLAIM FOR RELIEF**

8 (29 USCS § 206 and 207 – Fair Labor Standards Act -- Failure to Pay Minimum Wage
 9 and Overtime Compensation)
 10 (On Behalf of Class Against All Defendants)

11 63. Plaintiffs replead, reallege, and incorporate by reference each and every
 12 allegation set forth in the Complaint.

13 64. Defendants, by failing to pay Plaintiffs and Class Members the wages due
 14 and owing to them for work in excess of hours scheduled, have violated the Fair Labor
 15 Standards Act by failing to provide at least minimum and overtime wages as required by
 16 29 USCS § 206 and 207.

17 65. Each Plaintiff and Class Member therefore is entitled to be paid according
 18 to proof at least the minimum and overtime wages for the hours they worked and
 19 damages under 29 USCS § 216. Additionally, Plaintiffs are entitled to attorney's fees
 20 and costs.

21 **SIXTH CLAIM FOR RELIEF**

22 (Cal. Bus. & Prof. Code § 17200 *et seq.*)
 23 (On Behalf of Class Against All Defendants)

24 66. Plaintiffs replead, reallege, and incorporate by reference each and every
 25 allegation set forth in the Complaint.

26 67. WHITESIDE, NMS, JWC and DAVID R. WHITESIDE each are a "person"
 27 within the meaning of section 17201 of the California Business and Professions Code.

28 68. As set forth in this Complaint, Plaintiffs are informed, believe, and thereon
 allege that, for the last four years, WHITESIDE, NMS, JWC and DAVID R.
 WHITESIDE intentionally and improperly failed to comply with the California Labor

1 Code and the federal Fair Labor Standards Act.

2 69. The failure of WHITESIDE, NMS, JWC and DAVID R. WHITESIDE to
3 comply with the California Labor Code has resulted in WHITESIDE, NMS, JWC and
4 DAVID R. WHITESIDE under-reporting to state authorities wages earned by Plaintiffs
5 and Class Members and, therefore, in Defendants under-paying state taxes,
6 unemployment premiums, and workers' compensation premiums, all this in an amount
7 based on estimated unpaid wages according to proof.

8 70. Additionally, Plaintiffs are informed, believe, and thereon allege that
9 WHITESIDE, NMS, JWC and DAVID R. WHITESIDE were able to compete unfairly
10 by not complying with the California Labor Code. By competing unfairly, WHITESIDE,
11 NMS, JWC and DAVID R. WHITESIDE have gained a competitive advantage over
12 other comparable businesses in the State of California.

13 71. Accordingly, the failure of WHITESIDE, NMS, JWC and DAVID R.
14 WHITESIDE to comply with the California Labor Code is an unfair and/or unlawful
15 business activity prohibited by section 17200 *et seq.* of the California Business and
16 Professions Code, and it justifies the issuance of an injunction, restitution, and other
17 equitable relief pursuant to section 17203 of the California Business and Professions
18 Code. All remedies are cumulative pursuant to section 17205 of the California Business
19 and Professions Code.

20 72. Further, Plaintiffs request attorney's fees and costs pursuant to section
21 1021.5 of the California Code of Civil Procedure upon proof that they have acted in the
22 public interest as set forth in the Private Attorneys General Act.

23 **SEVENTH CLAIM FOR RELIEF**

24 (California Labor Code § 2802, Indemnification for Expenditures
25 or Losses in Discharge of Duties)

26 (On Behalf of Class Against WHITESIDE, NMS, and JWC)

27 73. Plaintiffs replead, reallege, and incorporate by reference each and every
28 allegation set forth in the Complaint.

74. At all times relevant herein, the relevant portion of section 2802 of the

1 California Labor Code provided:

2 (a) An employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of
4 the discharge of his or her duties, or of his or her obedience to the directions
5 of the employer, even though unlawful, unless the employee, at the time of
6 obeying the directions, believed them to be unlawful.

7 (b) All awards made by a court or by the Division of Labor Standards
8 Enforcement for reimbursement of necessary expenditures under this
9 section shall carry interest at the same rate as judgments in civil actions.
10 Interest shall accrue from the date on which the employee incurred the
11 necessary expenditure or loss.

12 (c) For purposes of this section, the term "necessary expenditures or losses"
13 shall include all reasonable costs, including, but not limited to, attorney's
14 fees incurred by the employee enforcing the rights granted by this section.

15 75. Plaintiffs and the members of the Class were required by Defendants to use
16 their own funds to provide for gas and tolls when traveling to and from construction sites
17 and the WHITESIDE yard in Richmond, California. On information and belief,
18 Plaintiffs and members of the Class have never been reimbursed for such costs, or
19 depreciation on their vehicles. Defendants required Plaintiffs and Class members to
20 bring and use their vehicles to perform the required duties. Accordingly, Plaintiffs and
21 class members use of their vehicles for Defendants was in "direct consequence of the
22 discharge of his [] duties." Cal. Lab. Code § 2802(a).

23 76. To date, Defendants have not reimbursed Plaintiffs and/or the members of the
24 Class for their expenditures.

25 77. Accordingly, Plaintiffs and the members of the Class are entitled to damages
26 in accordance with California Labor Code section 2802.

27 ///

28 ///

1 **WHEREFORE**, Plaintiffs pray for judgment as follows:

2 1. That this Court certify the class action and the collective action described in
3 this Complaint.

4 2. That, with respect to the First Claim for Relief, Plaintiff and Class Members
5 be awarded judgment according to proof, interest, attorneys' fees and costs.

6 3. That, with respect to the Second Claim for Relief, it be adjudged that the
7 failure of Defendant to make payment of wages within the time prescribed by sections
8 201 and/or 202 of the California Labor Code was "willful" within the meaning of section
9 203 of the California Labor Code and that this Court award Class Members continuing
10 wages, costs of suit, and interest, each according to proof.

11 4. That, with respect to the Third Claim for Relief, this Court enter judgment
12 in favor of Class Members for damages, injunctive relief, reasonable attorney's fees, and
13 costs of suit, each according to proof.

14 5. That, with respect to the Fourth Claim for Relief, each Class Member be
15 awarded his or her wages, liquidated damages, attorney's fees, and costs according to
16 proof.

17 6. That, with respect to the Fifth Claim for Relief, this Court enter judgment in
18 favor of Plaintiff in the amount of damages according to proof, reasonable attorney's
19 fees, statutory damages, and costs of suit.

20 7. That, with respect to the Sixth Claim for Relief, this Court enter judgment
21 for restitution in an amount according to proof, for interest on any restitution, and for
22 reasonable attorney's fees and costs.

23 8. That, with respect to the Seventh Claim for Relief, this Court enter
24 judgment in favor of Plaintiff in the amount of damages according to proof, reasonable
25 attorney's fees, statutory damages, and costs of suit.

26 ///

27 ///

28 ///

1 9 For such further relief as the Court may order.

2
3 DATED: February 25, 2008

HARRIS & RUBLE

4
5 
6 Alan Harris
7 Attorney for Plaintiffs

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal
11 Rules of Civil Procedure.

12 HARRIS & RUBLE

13
14 
15 Alan Harris
16 Attorney for Plaintiffs

EXHIBIT 1

029010

WHITESIDE CONSTRUCTION CORPORATION

Rec#: 299		Emp#: 485 MARGARITO GONZALEZ					Quarter: 1 State: CA	
Check: 29010		Date: 02/06/2007		Period: 02/05/2007 to 02/11/2007				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	23.9900	35.9900	47.9800				Diem	0.00
Hours:	8.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Pay:	191.92	0.00	0.00	0.00				
Totals:	Hours 8.00	Gross Pay 191.92	Add-Ons 18.24	Deductions 35.58	Net Pay 174.58	YTD Wages 6,273.49	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	13.03	424.44	State Disability (S	Ded	1.26	41.06
Employee Medicare	Ded	3.05	99.27	LABOR VACATION	A/D	18.24	572.28
Federal Income Tax	Ded		453.82	LABOR PENSION	Acc	26.08	818.26
State Income Taxes	Ded		100.57				

WHITESIDE CONSTRUCTION CORPORATION

030009

Rec#: 1235		Emp#: 485 MARGARITO GONZALEZ					Quarter: 2 State: CA	
Check: 30009		Date: 06/01/2007		Period: 05/28/2007 to 06/03/2007				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	23.9900	35.9900	47.9800				Diem	0.00
Hours:	18.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Pay:	431.82	0.00	0.00	0.00				
Totals:	Hours 18.00	Gross Pay 431.82	Add-Ons 41.04	Deductions 80.23	Net Pay 392.63	YTD Wages 7,281.07	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	29.32	492.85	State Disability (S	Ded	2.84	47.68
Employee Medicare	Ded	6.86	115.27	LABOR VACATION	A/D	41.04	668.04
Federal Income Tax	Ded	0.17	469.92	LABOR PENSION	Acc	58.68	955.18
State Income Taxes	Ded		100.57				

WHITESIDE CONSTRUCTION CORPORATION

027375

Rec#: 1820		Emp#: 485 MARGARITO GONZALEZ					Quarter: 3 State: CA	
Check: 27375		Date: 09/08/2006		Period: 08/28/2006 to 09/03/2006				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	23.9900	35.9900	45.9800					
Hours:	40.00	1.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	959.60	35.99	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours 41.00	Gross Pay 995.59	Add-Ons 93.48	Deductions 284.19	Net Pay 804.88	YTD Wages 15,283.69	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	67.52	1,037.08	State Disability (S	Ded	8.71	133.83
Employee Medicare	Ded	15.79	242.55	LABOR VACATION	A/D	93.48	1,443.24
Federal Income Tax	Ded	80.09	1,182.32	LABOR PENSION	Acc	133.66	1,875.63
State Income Taxes	Ded	18.60	272.76				

WHITESIDE CONSTRUCTION CORPORATION

027494

Rec#: 1937		Emp#: 485 MARGARITO GONZALEZ					Quarter: 3 State: CA	
Check: 27494		Date: 09/22/2006		Period: 09/11/2006 to 09/17/2006				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	23.9900	35.9900	45.9800					
Hours:	40.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	959.60	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours 40.00	Gross Pay 959.60	Add-Ons 91.20	Deductions 270.66	Net Pay 780.14	YTD Wages 17,046.96	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	65.15	1,156.72	State Disability (S	Ded	8.41	149.27
Employee Medicare	Ded	15.24	270.53	LABOR VACATION	A/D	91.20	1,609.68
Federal Income Tax	Ded	74.35	1,305.24	LABOR PENSION	Acc	130.40	2,113.61
State Income Taxes	Ded	16.31	297.61				

WHITESIDE CONSTRUCTION CORPORATION

027429

Rec#: 1873		Emp#: 485 MARGARITO GONZALEZ					Quarter: 3 State: CA	
Check: 27429		Date: 09/15/2006		Period: 09/04/2006 to 09/10/2006				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	23.9900	35.9900	45.9800					
Hours:	32.00	1.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	767.68	35.99	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours 33.00	Gross Pay 803.67	Add-Ons 75.24	Deductions 206.61	Net Pay 672.30	YTD Wages 16,087.36	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	54.49	1,091.57	State Disability (S	Ded	7.03	140.86
Employee Medicare	Ded	12.74	255.29	LABOR VACATION	A/D	75.24	1,518.48
Federal Income Tax	Ded	48.57	1,230.89	LABOR PENSION	Acc	107.58	1,983.21
State Income Taxes	Ded	8.54	281.30				

W. CONSTRUCTION, INC.

009022

Rec#: 239		Emp#: 82 FRANCISCO CISNEROS-ZAVALA					Quarter: 3 State: CA	
Check: 9022		Date: 07/13/2007		Period: 07/02/2007 to 07/08/2007				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	
Rate:	16.5000	24.7500	0.0000					0.00
Hours:	32.00	1.50	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	528.00	37.13	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours 33.50	Gross Pay 565.13	Add-Ons 0.00	Deductions 46.62	Net Pay 518.51	YTD Wages 17,980.90	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	35.04	1,114.85	State Income Taxes	Ded		16.39
Employee Medicare	Ded	8.19	260.72	State Disability (S)	Ded	3.39	107.90
Federal Income Tax	Ded		187.65				

J. W. CONSTRUCTION, INC.

009009

Rec#: 229		Emp#: 82 FRANCISCO CISNEROS-ZAVALA					Quarter: 3 State: CA	
Check: 9009		Date: 07/06/2007		Period: 06/25/2007 to 07/01/2007				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	
Rate:	16.5000	24.7500	0.0000					0.00
Hours:	40.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	660.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours 40.00	Gross Pay 660.00	Add-Ons 0.00	Deductions 60.64	Net Pay 599.36	YTD Wages 17,415.77	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	40.92	1,079.81	State Income Taxes	Ded		16.39
Employee Medicare	Ded	9.57	252.53	State Disability (S)	Ded	3.96	104.51
Federal Income Tax	Ded	6.19	187.65				

S SUPPLY, INC.

000102

Rec#: 10		Emp#: 2 FRANCISCO CISNEROS-ZAVALA					Quarter: 3 State: CA	
Check: 102		Date: 08/10/2007		Period: 07/30/2007 to 08/05/2007				
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	
Rate:	16.5000	24.7500	33.0000					0.00
Hours:	40.00	10.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	660.00	247.50	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours 50.00	Gross Pay 907.50	Add-Ons 0.00	Deductions 134.99	Net Pay 772.51	YTD Wages 1,171.50	Salary	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	58.27	72.64	State Income Taxes	Ded	8.98	8.98
Employee Medicare	Ded	13.16	18.99	State Disability (S)	Ded	5.46	7.03
Federal Income Tax	Ded	51.13	61.13				

J. W. CONSTRUCTION, INC.

008997

Rec#: 219		Emp#: 82 FRANCISCO CISNEROS-ZAVALA						Quarter: 2 State: CA	
Check: 8997		Date: 06/22/2007		Period: 06/11/2007 to 06/17/2007					
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	16.5000	24.7500	0.0000						
Hours:	12.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	198.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00	
	12.00	198.00	0.00	16.34	181.66	16,083.39			

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	12.28	997.20	State Income Taxes	Ded		16.39
Employee Medicare	Ded	2.87	233.21	State Disability (S)	Ded	1.19	96.52
Federal Income Tax	Ded		174.03				

J. W. CONSTRUCTION, INC.

009058

Rec#: 274		Emp#: 82 FRANCISCO CISNEROS-ZAVALA						Quarter: 3 State: CA	
Check: 9058		Date: 07/27/2007		Period: 07/16/2007 to 07/22/2007					
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	16.5000	24.7500	0.0000						
Hours:	0.00	8.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	0.00	198.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00	
	8.00	198.00	0.00	16.34	181.66	19,771.15			

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	12.28	1,225.85	State Income Taxes	Ded		23.01
Employee Medicare	Ded	2.87	286.68	State Disability (S)	Ded	1.19	118.64
Federal Income Tax	Ded		229.64				

J. W. CONSTRUCTION, INC.

009045

Rec#: 281		Emp#: 82 FRANCISCO CISNEROS-ZAVALA						Quarter: 3 State: CA	
Check: 9045		Date: 07/27/2007		Period: 07/16/2007 to 07/22/2007					
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	16.5000	24.7500	0.0000						
Hours:	40.00	11.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	660.00	272.25	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00	
	51.00	932.25	0.00	119.33	812.92	19,771.15			

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	57.80	1,225.85	State Income Taxes	Ded	6.62	23.01
Employee Medicare	Ded	13.52	286.68	State Disability (S)	Ded	5.59	118.64
Federal Income Tax	Ded	35.80	229.64				

W. CONSTRUCTION, INC.

008968

Rec#: 192	Emp#: 82 FRANCISCO CISNEROS-ZAVALA						Quarter: 2	State: CA
Check: 8968	Date: 06/08/2007						Period: 05/28/2007	to 06/03/2007
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	16.5000	24.7500	0.0000					
Hours:	24.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	396.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00
	24.00	396.00	0.00	32.67	363.33	14,594.26		

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	24.55	904.87	State Income Taxes	Ded		16.39
Employee Medicare	Ded	5.74	211.62	State Disability (S)	Ded	2.38	87.59
Federal Income Tax	Ded		167.84				

W. CONSTRUCTION, INC.

008986

Rec#: 209	Emp#: 82 FRANCISCO CISNEROS-ZAVALA						Quarter: 2	State: CA
Check: 8986	Date: 06/15/2007						Period: 06/04/2007	to 06/10/2007
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	16.5000	24.7500	0.0000					
Hours:	8.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	132.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00
	8.00	132.00	0.00	10.88	121.12	15,225.39		

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	8.18	944.00	State Income Taxes	Ded		16.39
Employee Medicare	Ded	1.91	220.77	State Disability (S)	Ded	0.79	91.37
Federal Income Tax	Ded		167.84				

W. CONSTRUCTION, INC.

009033

Rec#: 250	Emp#: 82 FRANCISCO CISNEROS-ZAVALA						Quarter: 3	State: CA
Check: 9033	Date: 07/20/2007						Period: 07/09/2007	to 07/15/2007
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	16.5000	24.7500	0.0000					
Hours:	40.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	660.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00
	40.00	660.00	0.00	60.64	599.36	18,640.90		

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	40.92	1,155.77	State Income Taxes	Ded		16.39
Employee Medicare	Ded	9.57	270.29	State Disability (S)	Ded	3.96	111.86
Federal Income Tax	Ded	6.19	193.84				

599.36
518.51
1017.85

J. W. CONSTRUCTION, INC.

UUb844

Rec#: 337		Emp#: 90 MARGARITO GONZALEZ						Quarter: 2 State: CA	
Check: 6844		Date: 06/25/2004						Period: 06/14/2004 to 06/20/2004	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	15.0000	22.5000	0.0000						
Hours:	40.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	600.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours 40.00	Gross Pay 600.00	Add-Ons 0.00	Deductions 196.38	Net Pay 403.62	YTD Wages 14,715.00	Salary	0.00	

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	37.20	912.35	State Income Taxes	Ded		0.42
Employee Medicare	Ded	8.70	213.38	State Disability (S	Ded	7.08	173.65
Federal Income Tax	Ded	8.85	200.60	Wage Attachment	Ded	134.55	1,345.50

J. W. CONSTRUCTION, INC.

006732

Rec#: 253		Emp#: 90 MARGARITO GONZALEZ						Quarter: 2 State: CA	
Check: 6732		Date: 05/07/2004						Period: 04/26/2004 to 05/02/2004	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	15.0000	22.5000	0.0000						
Hours:	40.00	1.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	600.00	22.50	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours 41.00	Gross Pay 622.50	Add-Ons 0.00	Deductions 200.63	Net Pay 421.87	YTD Wages 10,620.00	Salary	0.00	

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	38.60	658.45	State Income Taxes	Ded		0.42
Employee Medicare	Ded	9.03	154.00	State Disability (S	Ded	7.35	125.32
Federal Income Tax	Ded	11.10	145.25	Wage Attachment	Ded	134.55	403.65

J. W. CONSTRUCTION, INC.

006861

Rec#: 349		Emp#: 90 MARGARITO GONZALEZ						Quarter: 3 State: CA	
Check: 6861		Date: 07/02/2004						Period: 06/21/2004 to 06/27/2004	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	15.0000	22.5000	0.0000						
Hours:	40.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	600.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours 40.00	Gross Pay 600.00	Add-Ons 0.00	Deductions 196.38	Net Pay 403.62	YTD Wages 15,315.00	Salary	0.00	

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	37.20	949.55	State Income Taxes	Ded		0.42
Employee Medicare	Ded	8.70	222.08	State Disability (S	Ded	7.08	180.73
Federal Income Tax	Ded	8.85	209.45	Wage Attachment	Ded	134.55	1,480.05

J. CONSTRUCTION, INC.

007004

Rec#: 331		Emp#: 90 MARGARITO GONZALEZ						Quarter: 2 State: CA	
Check: 7664		Date: 06/10/2005		Period: 05/30/2005 to 06/05/2005					
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	15.0000	22.5000	0.0000						
Hours:	32.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	480.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours 32.00	Gross Pay 480.00	Add-Ons 0.00	Deductions 41.90	Net Pay 438.10	YTD Wages 12,393.75	Salary	0.00	

Calculation	Type	Check	Year
Employee Fica	Ded	29.76	768.41
Employee Medicare	Ded	6.96	179.70

Calculation	Type	Check	Year
Federal Income Tax	Ded		133.29
State Disability (S)	Ded	5.18	133.85

J. CONSTRUCTION, INC.

007908

Rec#: 555		Emp#: 90 MARGARITO GONZALEZ						Quarter: 4 State: CA	
Check: 7908		Date: 10/21/2005		Period: 10/10/2005 to 10/16/2005					
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	16.5000	24.7500	0.0000						
Hours:	40.00	8.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	660.00	198.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours 48.00	Gross Pay 858.00	Add-Ons 0.00	Deductions 117.18	Net Pay 740.82	YTD Wages 25,240.13	Salary	0.00	

Calculation	Type	Check	Year
Employee Fica	Ded	53.20	1,564.92
Employee Medicare	Ded	12.44	365.99
Federal Income Tax	Ded	36.20	472.70

Calculation	Type	Check	Year
State Income Taxes	Ded	6.07	35.68
State Disability (S)	Ded	9.27	272.61

007568

J. W. CONSTRUCTION, INC.

Rec#: 243		Emp#: 90 MARGARITO GONZALEZ						Quarter: 2 State: CA	
Check: 7568		Date: 04/29/2005		Period: 04/18/2005 to 04/24/2005					
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00	
Rate:	15.0000	22.5000	0.0000						
Hours:	40.00	2.00	0.00	0.00	0.00	0.00	Diem	0.00	
Pay:	600.00	45.00	0.00	0.00	0.00	0.00	Misc	0.00	
Totals:	Hours 42.00	Gross Pay 645.00	Add-Ons 0.00	Deductions 68.50	Net Pay 576.50	YTD Wages 9,405.00	Salary	0.00	

Calculation	Type	Check	Year
Employee Fica	Ded	39.99	583.11
Employee Medicare	Ded	9.35	136.37

Calculation	Type	Check	Year
Federal Income Tax	Ded	12.19	115.65
State Disability (S)	Ded	6.97	101.58

NMS SUPPLY, INC.

000128

Rec#: 33		Emp#: 2 FRANCISCO CISNEROS-ZAVAL					Quarter: 3 State: CA	
Check: 126		Date: 08/17/2007					Period: 08/06/2007 to 08/12/2007	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate	16.5000	24.7500	33.0000					
Hours	40.00	8.50	0.00	0.00	0.00	0.00	Diem	0.00
Pay	660.00	210.38	0.00	0.00	0.00	0.00	Misc	0.00
	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00
Totals	48.50	870.38	0.00	124.85	745.53	2,041.88		

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	53.98	126.60	State Income Taxes	Ded	7.49	16.47
Employee Medicare	Ded	12.62	29.61	State Disability (S)	Ded	5.22	12.26
Federal Income Tax	Ded	45.56	96.68				

000103

NMS SUPPLY, INC.

Rec#: 11		Emp#: 2 FRANCISCO CISNEROS-ZAVAL					Quarter: 3 State: CA	
Check: 103		Date: 08/10/2007					Period: 07/30/2007 to 08/05/2007	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate	16.5000	24.7500	33.0000					
Hours	16.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay	264.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00
Totals	16.00	264.00	0.00	21.78	242.22	1,171.50		

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	16.37	72.64	State Income Taxes	Ded	6.88	8.88
Employee Medicare	Ded	3.83	16.99	State Disability (S)	Ded	1.58	7.03
Federal Income Tax	Ded		51.13				

000142

NMS SUPPLY, INC.

Rec#: 48		Emp#: 2 FRANCISCO CISNEROS-ZAVAL					Quarter: 3 State: CA	
Check: 142		Date: 08/24/2007					Period: 08/13/2007 to 08/19/2007	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate	16.5000	24.7500	33.0000					
Hours	40.00	1.50	0.00	0.00	0.00	0.00	Diem	0.00
Pay	660.00	37.13	0.00	0.00	0.00	0.00	Misc	0.00
	Hours	Gross Pay	Add-Ons	Deductions	Net Pay	YTD Wages	Salary	0.00
Totals	41.50	697.13	0.00	80.75	616.38	2,739.01		

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	43.22	169.82	State Income Taxes	Ded	0.64	17.11
Employee Medicare	Ded	10.11	39.72	State Disability (S)	Ded	4.18	16.43
Federal Income Tax	Ded	22.60	119.28				

NMS SUPPLY, INC.

000331

Rec#: 217	Emp#: 27 WALTER A. PEREZ ESCOBAR #27						Quarter: 4	State: CA
Check: 331	Date: 12/07/2007						Period: 11/26/2007 to 12/02/2007	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	25.0000	37.5000	50.0000					
Hours:	32.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	800.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours: 32.00	Gross Pay: 800.00	Add-Ons: 0.00	Deductions: 128.06	Net Pay: 671.94	YTD Wages: 2,418.75	Salary:	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	49.60	149.96	State Income Taxes	Ded	8.02	26.84
Employee Medicare	Ded	11.60	35.07	State Disability (S)	Ded	4.80	14.51
Federal Income Tax	Ded	54.04	166.47				

NMS SUPPLY, INC.

000345

Rec#: 230	Emp#: 27 WALTER A. PEREZ ESCOBAR #27						Quarter: 4	State: CA
Check: 345	Date: 12/14/2007						Period: 12/10/2007 to 12/16/2007	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	25.0000	37.5000	50.0000					
Hours:	32.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	800.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours: 32.00	Gross Pay: 800.00	Add-Ons: 0.00	Deductions: 128.06	Net Pay: 671.94	YTD Wages: 4,218.75	Salary:	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	49.60	261.56	State Income Taxes	Ded	8.02	50.88
Employee Medicare	Ded	11.60	61.17	State Disability (S)	Ded	4.80	25.31
Federal Income Tax	Ded	54.04	304.55				

NMS SUPPLY, INC.

000340

Rec#: 225	Emp#: 27 WALTER A. PEREZ ESCOBAR #27						Quarter: 4	State: CA
Check: 340	Date: 12/14/2007						Period: 12/03/2007 to 12/09/2007	
	Regular	Overtime	Premium	Sick	Vacation	Holiday	Piece	0.00
Rate:	25.0000	37.5000	50.0000					
Hours:	40.00	0.00	0.00	0.00	0.00	0.00	Diem	0.00
Pay:	1,000.00	0.00	0.00	0.00	0.00	0.00	Misc	0.00
Totals:	Hours: 40.00	Gross Pay: 1,000.00	Add-Ons: 0.00	Deductions: 182.56	Net Pay: 817.44	YTD Wages: 3,418.75	Salary:	0.00

Calculation	Type	Check	Year	Calculation	Type	Check	Year
Employee Fica	Ded	62.00	211.96	State Income Taxes	Ded	16.02	42.86
Employee Medicare	Ded	14.50	49.57	State Disability (S)	Ded	6.00	20.51
Federal Income Tax	Ded	84.04	250.51				